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BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES



Protecting Consumer Rights In The Tour Industry: Who Is Responsible?

In 1977, American households took an estimated 312 million trips in the United States and abroad, of which 18.7 million were package tours. At least \$4 billion was spent on these tours.

The growing number of complaints about package tours demonstrates that travelers' consumer rights are not adequately protected. Greater Federal controls are needed to correct abuses, but may be difficult to achieve under the current disjointed Federal regulatory structure.

Congress should make the Federal Trade Commission the focal point for enforcing consumer protection in the tour industry.



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COMPTROLLER GENERAL OF THE UNITED STATES
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To the President of the Senate and the
Speaker of the House of Representatives

This report summarizes the results of our review of Federal controls over the tour industry, particularly package tours. We recently testified on this subject before the Subcommittee on Commerce, Consumer and Monetary Affairs, House Committee on Government Operations. (See app. I.)

In 1977, American households took an estimated 312 million trips, of which 18.7 million were package tours. We estimate that at least \$4 billion was spent on these package tours.

The growing number of complaints received by Federal agencies attests to the fact that the consumer rights of travelers taking package tours are not adequately protected. A Federal Trade Commission (FTC) investigation of the industry revealed that as many as 800,000 travelers a year may encounter problems with the tour they purchase.) These problems are:

- Failure to receive advertised items.
- Failure to notify consumers of significant changes in the package tour before departure.
- Omission of significant information from the charter contract and brochures.
- Limitation of liability clauses in tour contracts and the question of who is liable if a package does not materialize according to contract.

We have concluded that greater Federal controls to protect the touring public are needed, but may be difficult to achieve under the current disjointed Federal regulatory structure.

FEDERAL REGULATION OF PACKAGE TOURS

Federal authority to regulate the tour industry is disjointed. FTC is responsible for preventing unfair practices in industry, and the various transportation regulatory agencies--Civil Aeronautics Board (CAB), Interstate Commerce Commission (ICC), and the Federal Maritime Commission (FMC)--are responsible for regulating the modal aspects of tours.

Federal agencies exercise limited controls over package tours, resulting in limited protection to travelers against unfair and deceptive tour industry practices. Most Federal controls relate primarily to the transportation phase of a trip. Accompanying land arrangements, such as hotel accommodations, are not generally covered, except for air charters covered by CAB. However, these air charters represent less than 20 percent of all tour packages sold. This lack of coverage is due primarily to the absence of a clear legislative mandate for any agency to control these aspects of the travel industry. The agencies' authority to regulate package tours stems from their basic authority to regulate the carriers which provide the transportation portion of package tours. However, their authority to regulate land arrangements is unclear.

FTC has broad authority to protect consumers against unfair and deceptive business practices, but it is precluded from exercising jurisdiction over transportation carriers. When tour operators are also transportation carriers, it is questionable whether FTC could control their operations, including their nontransportation activities. A recent court case can be interpreted as holding that any business considered having carrier status with a regulatory transportation agency would have immunity from FTC jurisdiction. This, coupled with the unclear responsibility of the regulatory transportation agencies, has resulted in a regulatory gap. There are various options available to fill this gap and provide greater protection to the touring public.

TESTING THE FEDERAL REGULATORY BOUNDS

One possible approach to filling the Federal regulatory gap over package tours would be to have each regulatory agency attempt to extend its controls over tour operators. Under this approach, CAB, ICC, and FMC would expand their authority over tour operators by seeking judicial clarification of their legislative authority. Each agency could test the bounds of its authority by initiating selective enforcement cases through the judicial system or by issuing additional regulations. To the extent these controls could not be extended, FTC would attempt to fill the gaps.

Regulating the tour industry in this manner, however, has some distinct disadvantages. It might take years, through the judicial process, to determine whether CAB, ICC, FMC, and FTC collectively have sufficient authority to regulate all aspects of the package tour industry and to resolve the jurisdictional conflicts among them.

Assuming that the regulatory agencies have adequate authority to regulate the industry, and that the jurisdictional conflicts could be speedily resolved, this approach would continue the fragmentation of Federal regulation.

STATE REGULATION

State regulation is another alternative. Some States have attempted to control abuses in the travel industry and protect consumers. The concept of regulating travel agents and tour operators is still fairly new. The five States which have passed legislation--California, Hawaii, New York, Ohio, and Rhode Island--have not had much experience to date to determine how their regulations affect the travel industry.

State control of the industry does not appear to be an encouraging alternative because of the mobility of our society and the basic interstate nature of tours. A piecemeal State-by-State approach probably would not be effective, and the prospect for uniformity among the State laws is unlikely.

INDUSTRY SELF-REGULATION

A third alternative is industry self-regulation. This could be accomplished through a combined consumer protection trust fund and redress mechanism for tour passengers. In essence, the system would provide for the arbitration of consumer claims against tour operators and make necessary payments to consumers from the trust fund.

The trust fund concept could be used to cover all tours--those using chartered and scheduled transportation and those using all modes of transportation. We see many potential benefits from using the fund. The Federal regulatory agencies would benefit from a reduction in the time they must spend policing hard-to-enforce regulations. The tour operators would benefit by being freed from many complex Federal regulations. Consumers would have greater assurance that their travel funds were protected and that a clear course of action could be taken in the event an operator failed to provide services or refunds.

The fund is not necessarily an easy answer. The complexities of instituting the fund are formidable. Despite these complications, we believe the fund could provide the consumer valuable protections and minimize the regulatory burden of the industry. FTC would be the prime candidate to coordinate this effort because of its expertise in industry trade practices.

CLEARER LEGISLATIVE AUTHORITY

A fourth option is for the Congress to pass legislation giving FTC primary responsibility for preventing unfair trade practices in the tour operator industry. This would close the regulatory gap and simplify oversight and enforcement.

With FTC as the focal point for enforcing consumer protection, not only would the consumers be helped, but tour operators would also be helped. Tour operators would no longer be subjected to differing and fragmented controls. FTC could standardize consumer protection controls for all tour packages regardless of the type of transportation employed. This standardization would facilitate a more logical and uniform enforcement policy.

Under this alternative, each transportation regulatory agency would retain control over the transportation part of the tour only. The remaining tour activities--contracts, advertisements, land packages, etc.--would be subject to FTC jurisdiction. Although some jurisdictional overlap may occur, it could be minimized.

Another important reason for selecting FTC as the lead agency is that under the Airline Deregulation Act of 1978, CAB will gradually be phased out by 1985. Because most tour package controls come from CAB, the controls will probably be transferred to FTC before 1985.

CONCLUSIONS

Greater controls to protect the touring public are needed, but may be difficult to achieve under the current disjointed Federal regulatory structure. Establishing a Federal focal point to enforce consumer protection in the tour industry could help unify Federal controls. Also, in light of the present deregulation trend, steps could be taken to place more reliance on self-regulation in the tour industry.

RECOMMENDATIONS TO THE CONGRESS

We recommend that the Congress enact legislation providing FTC with primary responsibility for preventing unfair and

deceptive practices concerning ground or nontransportation parts of package tours. This can be accomplished by further amending section 5(a)(2) of the Federal Trade Commission Act (15 U.S.C. 45(a)(2)) by adding the following:

"* * * provided, however, that nothing in this subsection shall exclude from its coverage carriers, or others, insofar as ground or nontransportation parts of package tours are concerned."

In addition, the Congress should direct FTC to assist the tour operator industry in gradually implementing a consumer protection trust fund.

RECOMMENDATIONS TO THE CHAIRMAN, FTC

Once given the above authority, we recommend that FTC's regulation of the industry focus on the following:

- Requiring greater affirmative disclosure of basic tour information in brochures and contracts.
- Modifying the typical liability limitation clause in contracts to strike out language which is clearly unconscionable and unenforceable.
- Requiring that travelers be promptly notified of important changes in a package tour and that they be given the option to cancel without penalty.
- Making it easier for travelers to sue the tour operator in the jurisdiction where they purchased the tour package. This could be accomplished by requiring tour operators to designate travel agents which sell their tours as their agents for accepting service of process.

AGENCY COMMENTS AND OUR EVALUATION

We received comments on our recommendations from FMC, ICC, CAB, and FTC. (See apps. III, IV, V, and VI.) Both ICC and FMC pointed out they receive few complaints concerning package bus tours or cruises. Both believe their present regulations protect bus and cruise passengers in cases of nonperformance of transportation. For those portions of package tours outside their jurisdiction, FMC and ICC agree that increased consumer protections are appropriate and should be properly coordinated.

CAB comments

CAB also generally agreed with our recommendations. It did suggest, however, that in giving FTC authority to control

package tours, CAB's authority to also regulate this area not be terminated. CAB believes that it is unlikely that FTC could adopt regulations in a relatively short period of time after being given jurisdiction over package tours. Thus, during the interim period, the public would be deprived of the protections already established by CAB.

CAB said it does not anticipate dual jurisdiction will lead to any inconsistency in the regulation of tours, since it will work closely with FTC to insure that whatever regulations it has or will impose will mesh smoothly with whatever requirements FTC should establish.

We agree with CAB. Our recommendation to give FTC the authority to enforce consumer protections is not designed to diminish any other agency's authority.

FTC comments

FTC disagreed with our recommendation that it be given authority to control package tours. FTC stated that Federal authority over package tours should be given to the regulatory agencies having jurisdiction over the transportation aspect of the tour. FTC believes that giving it express authority over the nontransportation portion of package tours will result in dividing the authority to regulate closely inter-related parts of the same transaction. This division, FTC believes, could lead to a gap in regulation.

FTC further stated that CAB recently acted to provide protection to travelers using air transportation by putting into effect most of the remedial mechanisms we suggested. Because 95 percent of all tours involve air transportation, FTC believes CAB's rule is a promising approach to correct problems in the package tour industry.

We do not agree with FTC's position that package tours should be controlled by the regulatory agency having jurisdiction over the transportation aspect of the tour. Intermodal tours are common place today, thus jurisdictional conflicts and public confusion would increase under FTC's proposal. As we previously indicated, what is needed is a Federal focal point to enforce consumer protection in the tour industry. Because FTC is the Nation's primary preventer of unfair and deceptive practices affecting commerce, we believe it should monitor this industry as it does most others.

In addition, the recent CAB rules FTC mentioned control air charter tours only--this represents less than 20 percent of

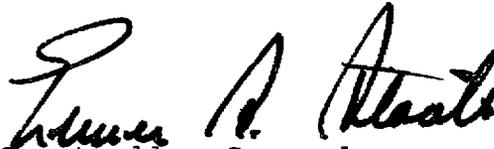
all package tours sold. It is questionable if CAB can extend these controls to tours using scheduled airlines. In light of the gradual phaseout of CAB over the next few years, it does not seem feasible for the Congress to broaden CAB's legislative authority. Since CAB's controls over charters will probably be transferred to FTC in a few years, we believe FTC should be given the authority to enforce consumer protection for all package tours now.

Finally, FTC disagreed with our recommendation that the Congress direct it to assist the industry in setting up a consumer protection fund. FTC interpreted this recommendation to mean that the Congress would be mandating a fund. As a result, FTC suggested that rather than mandating the creation of such a fund, it would be preferable to mandate that the advisability and workability of a fund be formally considered.

Our recommendation is not intended to mandate a consumer protection fund. It would merely require FTC to investigate the economic and practical implications of implementing a fund and, if found practical, encourage and assist the industry in its development.

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We are sending copies of this report to the Director, Office of Management and Budget; the Chairmen, Civil Aeronautics Board, Federal Trade Commission, Interstate Commerce Commission, and Federal Maritime Commission; interested congressional committees; and other interested parties.


Comptroller General
of the United States

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ABBREVIATIONS

CAB	Civil Aeronautics Board
FMC	Federal Maritime Commission
FTC	Federal Trade Commission
ICC	Interstate Commerce Commission

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

FOR RELEASE OR DELIVERY
EXPECTED THURSDAY MORNING
APRIL 5, 1979

STATEMENT OF
HENRY ESCHWEGE, DIRECTOR
COMMUNITY AND ECONOMIC DEVELOPMENT DIVISION

BEFORE THE
HOUSE SUBCOMMITTEE ON COMMERCE, CONSUMER AND MONETARY AFFAIRS
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
ON
FEDERAL RESPONSE TO CONSUMER FRAUD IN THE TRAVEL INDUSTRY

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

WE ARE HERE TODAY AT YOUR REQUEST TO DISCUSS WITH YOU
OUR ONGOING REVIEW OF FEDERAL CONTROLS OVER TOUR OPERATORS
AND TRAVEL AGENTS. WE WILL ADDRESS SOME OF THE INDUSTRY'S
PROBLEMS AND VARIOUS OPTIONS AVAILABLE TO RESOLVE THEM.

BACKGROUND

PURCHASING A PACKAGE TOUR IS LIKE BUYING A PRODUCT OFF
THE SUPERMARKET SHELF. SOMEONE ELSE--THE TOUR OPERATOR--HAS
CHOSEN THE DESTINATION, HOTEL, TRAVEL DATES, ITINERARY, ETC.
THE CONSUMER CAN DECIDE TO BUY THE PACKAGE OR MAKE HIS OWN
ARRANGEMENTS. MANY CHOOSE THE PACKAGE TOUR BECAUSE OF THE
CONVENIENCE AND SECURITY IT OFFERS.

THE ROLE OF THE TOUR OPERATOR IS TO CONSOLIDATE THE
SERVICES OF AIRLINES OR OTHER TRANSPORTATION CARRIERS AND
GROUND SERVICES SUPPLIERS INTO A TOUR WHICH IS SOLD THROUGH
RETAIL TRAVEL AGENTS. THESE AGENTS SERVE AS CONDUITS OF
INFORMATION AND MONEY BETWEEN SUPPLIERS OR TOUR OPERATORS

AND CONSUMERS. BECAUSE THE TRAVEL AGENT HAS LITTLE CONTROL OVER THE TOUR, HE HAS LIMITED RESPONSIBILITY FOR ITS FAILURE OR SUCCESS. PRIMARY RESPONSIBILITY RESTS WITH THE TOUR OPERATOR.

THE TOUR OPERATOR INDUSTRY IS OFTEN CHARACTERIZED AS RISKY, AND NOT ENORMOUSLY PROFITABLE. OPERATORS COME AND GO WITH GREAT EASE. ACCORDING TO A 1975 STUDY BY TOUCHE ROSS & CO., OPERATORS EARN AN AVERAGE BEFORE-TAX PROFIT MARGIN OF 3 PERCENT OF SALES. HOWEVER, THERE IS POTENTIAL FOR HIGH RETURN ON EQUITY SINCE THE NECESSARY INVESTMENT IS RELATIVELY SMALL COMPARED TO THE POTENTIAL SALES.

RESPONDING TO HEAVY PROMOTION FROM AIRLINES AND TOURIST AGENCIES, AMERICAN HOUSEHOLDS TOOK ABOUT 312 MILLION TRIPS IN 1977. PACKAGE TOURS ARE INCREASINGLY BECOMING A LARGER PORTION OF THE TRAVEL MARKET. THE DEPARTMENT OF COMMERCE, IN ITS SOON TO BE RELEASED 1977 NATIONAL TRAVEL SURVEY, ESTIMATES THAT 18.7 MILLION TRIPS WERE PART OF A PACKAGE TOUR, AND THAT 23.7 MILLION TRIPS INVOLVED THE USE OF TRAVEL AGENTS. ALTHOUGH IT IS NOT KNOWN PRECISELY HOW MUCH WAS SPENT ON PACKAGE TOURS, WE ESTIMATE THAT IT WAS AT LEAST \$4 BILLION.

WHEN A TRAVELER PURCHASES A PACKAGE TOUR HE DEVELOPS VARIOUS EXPECTATIONS. THESE EXPECTATIONS ARE DERIVED FROM GLOSSY MULTI-COLOR TRAVEL BROCHURES, AND A TRAVEL AGENT'S SALES PITCH. ALTHOUGH THE TRAVELER'S EXPECTATIONS MAY SOMETIMES BE UNREALISTIC, HE DOES HAVE A RIGHT TO EXPECT THAT

- ALL COSTS, BOTH INCLUDED AND OPTIONAL, WILL BE FULLY DISCLOSED;
- SERVICES AND ITEMS PROMISED WILL BE DELIVERED;
- ADVANCE PAYMENTS WILL BE SAFEGUARDED; AND
- LEGITIMATE COMPLAINTS WILL BE SATISFACTORILY RESOLVED.

COMPLAINTS RECEIVED BY FEDERAL AGENCIES, AND DISCUSSED EARLIER AT THESE HEARINGS, ATTEST TO THE FACT THAT FOR SOME, THESE CONSUMER RIGHTS ARE VIOLATED. ALTHOUGH MOST TRAVELERS DO NOT EXPERIENCE MAJOR PROBLEMS WITH THE PACKAGE TOURS THEY PURCHASE, A FEDERAL TRADE COMMISSION (FTC) INVESTIGATION OF THE INDUSTRY REVEALS THAT PROBLEMS DO EXIST AND MAY AFFECT AS MANY AS 800,000 TRAVELERS A YEAR. THESE PROBLEMS ARE:

- FAILURE TO RECEIVE ADVERTISED ITEMS,
- LACK OF CONSUMER NOTIFICATION OF SIGNIFICANT CHANGES IN THE PACKAGE TOUR PRIOR TO DEPARTURE,
- OMISSION OF SIGNIFICANT INFORMATION FROM THE CHARTER CONTRACT AND BROCHURES, AND
- LIMITATION OF LIABILITY CLAUSES IN TOUR CONTRACTS AND THE OVERALL QUESTION OF WHO IS LIABLE IF A PACKAGE DOES NOT MATERIALIZE ACCORDING TO CONTRACT.

A SUMMARY OF FTC'S FINDINGS CONCERNING THESE PROBLEMS, ALONG WITH EXAMPLES ARE INCLUDED IN THE APPENDIX. See GAO note below.

FEDERAL REGULATION
OF PACKAGE TOURS

FEDERAL AUTHORITY TO REGULATE THE TOUR OPERATOR INDUSTRY

Note: The appendix to this testimony is shown as appendix II.

IS DISJOINTED. FTC IS RESPONSIBLE FOR PREVENTING UNFAIR INDUSTRY TRADE PRACTICES, AND THE VARIOUS TRANSPORTATION REGULATORY AGENCIES--CIVIL AERONAUTICS BOARD (CAB), INTERSTATE COMMERCE COMMISSION (ICC), AND THE FEDERAL MARITIME COMMISSION (FMC), REGULATE THE MODAL ASPECTS OF THE TOUR. EACH AGENCY HAS RESPONSIBILITY FOR THE ECONOMIC REGULATION OF THE TRANSPORTATION CARRIERS WITHIN THEIR MODAL JURISDICTION--CAB (AIR), ICC (BUS, RAIL, AND SMALL SHIPS), AND FMC (SHIPS)--BUT THEY HAVE EXERCISED ONLY LIMITED CONTROLS OVER PACKAGE TOURS.

CAB HAS BEEN THE MOST AGGRESSIVE REGULATORY AGENCY IN EXERCISING CONTROLS OVER PACKAGE TOURS, PRIMARILY BECAUSE ABOUT 95 PERCENT OF ALL TOURS INVOLVE AIR TRANSPORTATION. CAB'S CONTROLS, HOWEVER, CONCERN MAINLY CHARTER TOURS. RECENTLY, CAB STRENGTHENED CONSUMER PROTECTION REGULATIONS CONCERNING AIR CHARTER TOURS. THESE REGULATIONS, WHICH BECOME EFFECTIVE MAY 1, 1979, ALLOW PASSENGERS TO CANCEL AND OBTAIN REFUNDS IF MAJOR CHANGES ARE MADE IN THE TOUR, AND CONTROL AIR CHARTER ADVERTISING AND THE TOUR OPERATOR'S CONTRACT WITH THE CONSUMER.

ICC REQUIRES BUS TOUR OPERATORS TO OBTAIN AN OPERATING LICENSE. TO OBTAIN A LICENSE ICC REQUIRES OPERATORS TO DEMONSTRATE A NEED FOR BUS SERVICE AND THEIR ABILITY TO PERFORM SUCH SERVICES. BOTH BUS TOUR AND AIR CHARTER OPERATORS, AS WELL AS LARGE VESSEL CRUISE OPERATORS REGULATED BY FMC, ARE

REQUIRED TO PROVIDE BONDS OR OTHER FINANCIAL SECURITY TO INSURE REFUNDS IN CASE THE TRANSPORTATION IS NOT PROVIDED.

PRESENTLY, FEDERAL AGENCIES EXERCISE LIMITED CONTROLS OVER PACKAGE TOURS RESULTING IN LIMITED PROTECTION TO TRAVELERS AGAINST UNFAIR AND DECEPTIVE TOUR INDUSTRY PRACTICES. MOST FEDERAL CONTROLS RELATE PRIMARILY TO THE TRANSPORTATION PHASE OF A TRIP. ACCOMPANYING LAND ARRANGEMENTS, SUCH AS HOTEL ACCOMMODATIONS, ARE NOT COVERED EXCEPT WHEN SOLD AS PART OF AN AIR CHARTER. THE U.S. TOUR OPERATORS ASSOCIATION ESTIMATES THAT LESS THAN 20 PERCENT OF PACKAGE TOURS INVOLVE AIR CHARTERS. THUS, MOST NON-TRANSPORTATION ASPECTS OF PACKAGE TOURS ARE NOT SUBJECTED TO ANY FEDERAL CONTROLS, INCLUDING:

- TOURS USING SCHEDULED AIR TRANSPORTATION,
- TOURS USING RAIL OR SMALL SHIPS (ACCOMMODATING LESS THAN 50 PASSENGERS),
- TOURS WHICH PROVIDE NON-TRANSPORTATION SERVICES ONLY,
- LARGE VESSEL CRUISES WHICH EMBARK U.S. TRAVELERS AT FOREIGN PORTS, AND
- NON-TRANSPORTATION SERVICES INCLUDED IN BUS TOURS.

LACK OF FEDERAL CONTROL IS DUE PRIMARILY TO THE ABSENCE OF A CLEAR LEGISLATIVE MANDATE FOR ANY AGENCY TO CONTROL THE ABOVE ASPECTS OF THE TRAVEL INDUSTRY. FEDERAL AGENCIES GENERALLY HAVE NO SPECIFIC LEGISLATIVE AUTHORITY TO REGULATE PACKAGE TOURS. TO THE EXTENT PACKAGE TOURS ARE REGULATED,

THE AGENCIES' AUTHORITY STEMS FROM THEIR BASIC AUTHORITY FOR THE ECONOMIC REGULATION OF THE VARIOUS MODAL CARRIERS WHICH PROVIDE THE TRANSPORTATION PORTION OF PACKAGE TOURS. HOWEVER, THEIR AUTHORITY TO REGULATE THE LAND ARRANGEMENTS PORTION OF A TOUR REMAINS UNCLEAR.

THE FTC HAS BROAD AUTHORITY TO PROTECT CONSUMERS AGAINST UNFAIR AND DECEPTIVE BUSINESS PRACTICES, BUT IS PRECLUDED FROM EXERCISING JURISDICTION OVER TRANSPORTATION CARRIERS. WHEN TOUR OPERATORS ARE ALSO TRANSPORTATION CARRIERS, IT IS QUESTIONABLE WHETHER FTC COULD CONTROL THEIR OPERATIONS INCLUDING THEIR NON-TRANSPORTATION ACTIVITIES. A RECENT COURT CASE, FTC v. MILLER, 549 F.2d 452 (7th Cir. 1977) CAN BE INTERPRETED AS HOLDING THAT ANY BUSINESS CONSIDERED HAVING CARRIER STATUS WITH A REGULATORY TRANSPORTATION AGENCY COULD ENJOY IMMUNITY FROM FTC JURISDICTION. THIS, COUPLED WITH THE UNCLEAR RESPONSIBILITY OF THE REGULATORY TRANSPORTATION AGENCIES, HAS RESULTED IN A REGULATORY GAP.

VARIOUS OPTIONS ARE AVAILABLE TO FILL THIS GAP AND PROVIDE GREATER PROTECTION TO THE TOURING PUBLIC. THESE INCLUDE:

- SELECTIVE ENFORCEMENT CASES OR ADDITIONAL REGULATIONS TO TEST THE BOUNDS OF EACH AGENCY'S LEGISLATIVE AUTHORITY,
- STATE REGULATION,
- INDUSTRY SELF-REGULATION, AND
- CONGRESSIONAL LEGISLATION CLEARLY DELINEATING THE AUTHORITY FOR CONTROLLING PACKAGE TOURS.

TESTING THE FEDERAL
REGULATORY BOUNDS

ONE POSSIBLE APPROACH TO FILLING THE FEDERAL REGULATORY GAP OVER PACKAGE TOURS WOULD BE FOR EACH REGULATORY AGENCY TO ATTEMPT TO EXTEND ITS CONTROLS OVER TOUR OPERATORS. UNDER THIS APPROACH, CAB, ICC, AND FMC WOULD EXTEND THEIR AUTHORITY OVER TOUR OPERATORS BY SEEKING JUDICIAL CLARIFICATION OF THEIR LEGISLATIVE AUTHORITY. EACH AGENCY COULD TEST THE BOUNDS OF ITS AUTHORITY BY INITIATING SELECTIVE ENFORCEMENT CASES THROUGH THE JUDICIAL SYSTEM, OR BY ISSUING ADDITIONAL REGULATIONS. TO THE EXTENT THESE CONTROLS COULD NOT BE EXTENDED, FTC WOULD ATTEMPT TO FILL THE GAPS.

THIS OPTION REPRESENTS ONE OF THE LESS DRASTIC MEASURES FOR DEALING WITH TOUR INDUSTRY ABUSES. ITS PRIMARY ADVANTAGE IS THAT IT ATTEMPTS TO MAXIMIZE USE OF THE FEDERAL REGULATORY MACHINERY ALREADY IN PLACE, AND SEEKS TO PROVIDE COMPREHENSIVE FEDERAL REGULATION OF THE TOUR INDUSTRY WITHOUT ADDITIONAL LEGISLATION.

REGULATION OF THE TOUR INDUSTRY IN THIS MANNER, HOWEVER, HAS SOME DISTINCT DISADVANTAGES. IT MIGHT TAKE YEARS, THROUGH THE JUDICIAL PROCESS, TO DETERMINE WHETHER CAB, ICC, FMC, AND FTC COLLECTIVELY HAVE SUFFICIENT AUTHORITY TO REGULATE ALL ASPECTS OF THE PACKAGE TOUR INDUSTRY, AND TO RESOLVE JURISDICTIONAL CONFLICTS AMONG THEM.

ASSUMING THAT THE REGULATORY AGENCIES HAVE ADEQUATE AUTHORITY TO REGULATE THE INDUSTRY, AND THAT THE JURISDICTIONAL

CONFLICTS COULD BE RESOLVED, THIS APPROACH STILL SUFFERS FROM A MAJOR DRAWBACK. IT WOULD CONTINUE THE FRAGMENTATION OF FEDERAL REGULATION OF THE PACKAGE TOUR INDUSTRY.

IN PICKING UP REGULATORY CONTROL OVER TOUR ACTIVITIES CURRENTLY NOT SUBJECT TO REGULATION, FTC WOULD END UP WITH A CONGLOMERATION OF UNRELATED BITS AND PIECES OF THE TOUR INDUSTRY. SUCH FURTHER SPLINTERING OF FEDERAL CONTROLS COULD SUBJECT THE TOUR INDUSTRY TO DUPLICATIVE REGULATORY BURDENS, AND INCREASE CONFUSION AND FRUSTRATION AMONG TRAVELERS SEEKING FEDERAL INTER-CESSION IN RESOLVING COMPLAINTS.

FOR EXAMPLE, IF CAB IS UNABLE TO EXTEND ITS CONSUMER PROTECTION REGULATIONS TO PACKAGE TOURS USING SCHEDULED AIR TRANSPORTATION AND FTC IS ABLE TO FILL THIS GAP, CONSUMER PROBLEMS WITH CHARTER TOURS WOULD BE DIRECTED TO CAB WHILE THOSE PROBLEMS WITH PACKAGE TOURS USING SCHEDULED AIR TRANSPORTATION WOULD GO TO FTC--A DISTINCTION THE TRAVELER MAY NOT UNDERSTAND.

FINALLY, THIS ALTERNATIVE IS CONTRARY TO THE GROWING TREND TOWARD FEDERAL WITHDRAWAL FROM THE ECONOMIC REGULATION OF TRANSPORTATION. UNDER RECENT DEREGULATION LEGISLATION, MOST OF CAB'S ECONOMIC REGULATORY RESPONSIBILITIES ARE BEING PHASED OUT. A SIMILAR TREND IS TAKING PLACE AT ICC. AS THE ECONOMIC REGULATORY FUNCTIONS OF THE TRANSPORTATION AGENCIES ARE PHASED OUT, THEIR CONSUMER PROTECTION FUNCTIONS WILL PROBABLY HAVE TO BE ASSUMED BY OTHER FEDERAL AGENCIES. THEREFORE, CONTINUATION OF SPLINTERED ENFORCEMENT OF CONSUMER PROTECTION CONCERNING PACKAGE TOURS, MAY MERELY POSTPONE THE INEVITABLE.

STATE REGULATION

SOME STATES HAVE ATTEMPTED TO CONTROL ABUSES IN THE TRAVEL INDUSTRY AND PROTECT LOCAL CONSUMERS. PRESENTLY FIVE STATES HAVE ENACTED LAWS COVERING TRAVEL AGENTS OR TOUR OPERATORS DOING BUSINESS WITHIN THEIR BORDERS: NEW YORK, RHODE ISLAND, OHIO, CALIFORNIA, AND HAWAII. OTHERS HAVE SIMILAR LEGISLATION PENDING.

THE CONCEPT OF REGULATING TRAVEL AGENTS AND TOUR OPERATORS IS STILL FAIRLY NEW. THE STATES WHICH HAVE PASSED LEGISLATION HAVE NOT HAD MUCH EXPERIENCE TO DATE AS TO HOW THEIR REGULATIONS AFFECT THE TRAVEL INDUSTRY.

THE CONTROLS INSTITUTED OR PROPOSED BY THE STATES HAVE BEEN PRIMARILY REGISTERING, LICENSING, AND DISCLOSURE REQUIREMENTS. CONNECTED WITH THE LICENSING REQUIREMENT, IN SOME INSTANCES, IS A BONDING REQUIREMENT OR SOME PROOF OF FINANCIAL STABILITY. THE DEGREE OF COVERAGE OVER BOTH TRAVEL AGENTS AND TOUR OPERATORS VARIES AMONG THE STATES.

THE AMERICAN SOCIETY OF TRAVEL AGENTS HAS DEVELOPED MODEL LEGISLATION FOR STATE REGULATION OF TRAVEL AGENTS. THE SOCIETY IS PROMOTING THIS MODEL ACT AS A MEANS OF GETTING BASIC UNIFORMITY AMONG THE STATES PASSING LEGISLATION.

STATE CONTROL OF THE INDUSTRY DOES NOT APPEAR TO BE AN ENCOURAGING ALTERNATIVE, BECAUSE OF THE MOBILITY OF OUR SOCIETY AND THE BASIC INTERSTATE NATURE OF TOURS. A PIECEMEAL STATE-BY-STATE APPROACH PROBABLY WOULD NOT BE EFFECTIVE, AND THE PROSPECTS FOR UNIFORMITY AMONG THE STATE LAWS IS UNLIKELY.

INDUSTRY SELF-REGULATION

WITH THE CURRENT EMPHASIS ON REDUCING GOVERNMENT REGULATION, THIS MAY BE AN OPPORTUNE TIME TO ENGAGE THE TOUR INDUSTRY IN POLICING ITS OWN PROBLEMS. THIS COULD BE ACCOMPLISHED THROUGH A COMBINED CONSUMER PROTECTION FUND AND REDRESS MECHANISM FOR TOUR PASSENGERS, SUCH AS HAS BEEN PROPOSED BY TWO TRADE ASSOCIATIONS--THE AMERICAN SOCIETY OF TRAVEL AGENTS AND THE AIR CHARTER TOUR OPERATORS OF AMERICA.

IN ESSENCE, THE TWO INDUSTRY GROUPS HAVE SUGGESTED A JOINT FEDERAL AND INDUSTRY EFFORT. THE GOVERNMENT WOULD WORK WITH THE INDUSTRY IN SETTING UP THE OPERATING REQUIREMENTS AND CONSUMER SAFEGUARDS FOR THE SYSTEM, BUT THE ACTUAL OPERATION OF THE FUND WOULD BE PRIMARILY THE INDUSTRY'S RESPONSIBILITY. WE WON'T GO INTO THE DETAILS OF THEIR PROPOSALS, WHICH WE UNDERSTAND HAVE ALREADY BEEN DISCUSSED AT THESE HEARINGS, BUT WE WILL HIGHLIGHT WHAT WE BELIEVE ARE THE MOST IMPORTANT FEATURES OF THE PLANS.

THESE TWO INDUSTRY PLANS, THOUGH DIFFERING IN DETAILS, BOTH PROVIDE FOR A TRUST FUND TO PROTECT PASSENGERS FROM OPERATOR DEFAULTS ON AIR CHARTER TOURS ONLY. THE FUND WOULD BE ADMINISTERED BY A BOARD COMPOSED EITHER OF INDUSTRY OR A COMBINATION OF GOVERNMENT AND INDUSTRY REPRESENTATIVES. THE BOARD WOULD APPOINT A COMMISSIONER TO HEAR CLAIMS AGAINST MEMBER TOUR OPERATORS. THE COMMISSIONER'S DECISIONS COULD BE SUBJECT TO ARBITRATION IF THE CLAIMANT DISAGREED WITH THE

DECISION. THE CONSUMER WOULD ALSO KEEP THE RIGHT TO PURSUE CLAIMS AGAINST THE TOUR OPERATOR THROUGH THE REGULAR COURT SYSTEM.

THE CONCEPT IS NOT NEW. THE UNITED KINGDOM AND THREE PROVINCES IN CANADA HAVE SET UP CONSUMER PROTECTION FUNDS FOR TOUR PASSENGERS. THE ONTARIO, CANADA, FUND ILLUSTRATES HOW SUCH A PLAN CAN OPERATE SUCCESSFULLY. TOUR OPERATORS AND TRAVEL AGENTS SELLING TOURS PAY INTO THE FUND; THE CONSUMER THEN IS PROTECTED IN CASE ANY OF THE PARTICIPATING OPERATORS OR AGENTS DEFAULT IN PROVIDING TOUR SERVICES OR REFUNDS. THE ONTARIO FUND COVERS TOURS USING BOTH CHARTER AND SCHEDULED TRANSPORTATION.

THE TRUST FUND CONCEPT COULD BE USED IN THE UNITED STATES TO COVER ALL TOURS--THOSE USING CHARTER AND SCHEDULED TRANSPORTATION AND ON ALL MODES. BOTH THE CHARTER TOUR OPERATOR AND THE TRAVEL AGENT ASSOCIATIONS AGREE THAT THEIR ORIGINAL PROPOSALS COULD BE EXPANDED TO INCLUDE MORE THAN JUST AIR CHARTER TOURS.

WE SEE MANY POTENTIAL BENEFITS FROM USE OF THE FUND. THE FEDERAL REGULATORY AGENCIES WOULD BENEFIT FROM A REDUCTION IN THE TIME THEY MUST SPEND POLICING HARD TO ENFORCE REGULATIONS. THE TOUR OPERATORS WOULD BENEFIT BY BEING FREED FROM MANY COMPLEX FEDERAL REGULATIONS, SUCH AS CAB'S RESTRICTIVE ESCROW REQUIREMENTS FOR CHARTER TOURS. CONSUMERS WOULD HAVE GREATER ASSURANCE THAT THEIR TRAVEL FUNDS WERE PROTECTED AND THAT A CLEAR COURSE OF ACTION COULD BE TAKEN IN THE EVENT AN OPERATOR FAILED TO PROVIDE SERVICES OR REFUNDS.

THE FUND IS NOT A NECESSARILY EASY ANSWER, HOWEVER. THE LARGER TOUR OPERATORS WE SPOKE WITH ALL VOICED STRONG OPPOSITION TO THE FUND IDEA. SOME TOUR OPERATORS BELIEVE THAT THE FUND WOULD RESULT IN REPUTABLE TOUR OPERATORS UNDERWRITING THE LOSSES OF BAD OPERATORS. IN ADDITION, THEY BELIEVE THAT THE FUND WOULD INVITE A FLOOD OF CONSUMER COMPLAINTS IF IT WERE OPEN TO CLAIMS INVOLVING QUALITY OF SERVICE OR PARTIAL NON-PERFORMANCE.

WE BELIEVE THAT THE FUND COULD BE SET UP TO MINIMIZE THESE PROBLEMS. PAYMENT TO A CONSUMER FROM THE FUND WOULD NOT ABSOLVE THE OPERATOR'S LIABILITY. RATHER, THE CONSUMER WOULD SUBROGATE HIS RIGHTS TO THE FUND WHICH, IN TURN, WOULD COLLECT FROM THE TOUR OPERATOR, IF SOLVENT. CONCERNS THAT THE FUND WOULD INVITE CONSUMER COMPLAINTS CONCERNING QUALITY OF SERVICE MAY BE JUSTIFIED. HOWEVER, THESE COMPLAINTS ARE ONLY FESTERING NOW, AND TO THE EXTENT THEY ARE VALID, THEY SHOULD BE PAID.

SOME OF THE COMPLEXITIES COULD BE RESOLVED BY USING A STEP APPROACH TO SETTING UP THE FUND. THE EXTENT OF THE FUND'S COVERAGE AND LEVEL OF PARTICIPATION COULD GRADUALLY BE EXPANDED. THE FUND'S COVERAGE COULD BE INITIALLY LIMITED TO DEFAULTS. WHEN THE FUND HAS GAINED EXPERIENCE HANDLING SUCH CLAIMS IT COULD BE EXPANDED TO COVER OTHER CLAIMS INVOLVING QUALITY OF SERVICE OR PARTIAL NON-PERFORMANCE.

PARTICIPATION IN THE FUND COULD INITIALLY BE OPTIONAL. THE OPERATOR CHOOSING TO PARTICIPATE WOULD STILL BE SUBJECT TO FEDERAL REGULATIONS COVERING SUCH MATTERS AS ADEQUATE DISCLOSURE

STATEMENTS. PARTICIPATION WOULD, HOWEVER, EXEMPT THE TOUR OPERATOR FROM THE MORE CUMBERSOME FINANCIAL REGULATIONS WHICH WOULD OTHERWISE BE IMPOSED BY THE REGULATORY AGENCIES.

POSSIBLY THE MOST DIFFICULT COMPLICATION TO RESOLVE IS THE INTERAGENCY COORDINATION NECESSARY TO ESTABLISH THE FUND. FTC WOULD BE THE PRIME CANDIDATE TO COORDINATE THIS EFFORT BECAUSE OF ITS EXPERTISE IN INDUSTRY TRADE PRACTICES.

DESPITE THE POSSIBLE COMPLICATIONS WITH SETTING UP THE FUND, WE BELIEVE IT COULD PROVIDE THE CONSUMER WITH VALUABLE PROTECTIONS AND MINIMIZE THE REGULATORY BURDEN OF THE INDUSTRY. THE FUND COULD PROVIDE LONG-TERM BENEFITS BY ESTABLISHING SELF-REGULATION AS A VIABLE ALTERNATIVE FOR CONSUMER PROTECTION.

CLEARER LEGISLATIVE AUTHORITY

THE TOUR OPERATOR INDUSTRY DEVELOPED PROMINENCE DURING THE POST-WORLD WAR II PERIOD, YEARS AFTER THE CREATION OF THE TRANSPORTATION REGULATORY AGENCIES. THUS, TOUR OPERATORS WERE NEVER THE FOCAL POINT OF ANY ONE FEDERAL AGENCY. RATHER, CONTROLS WERE DEVELOPED ACCORDING TO THE PRIMARY MEANS OF TRANSPORTATION USED IN THE TOUR. BECAUSE INTER-MODAL TOURS ARE COMMON PLACE TODAY, THIS APPROACH IS INEFFECTIVE AND HAS ALLOWED SOME TOUR OPERATIONS TO ESCAPE ANY OVERSIGHT. CONGRESSIONAL LEGISLATION CLEARLY DELINEATING AUTHORITY TO CONTROL UNFAIR TRADE PRACTICES IN THE TOUR OPERATOR INDUSTRY WOULD CLOSE THIS REGULATORY GAP AND SIMPLIFY OVERSIGHT AND ENFORCEMENT.

FTC IS A PRIME CANDIDATE TO RECEIVE THIS AUTHORITY. DESIGNATED THE NATION'S PRIMARY PREVENTER OF UNFAIR AND

DECEPTIVE PRACTICES AFFECTING COMMERCE, FTC HAS DEVELOPED THE NECESSARY EXPERTISE TO EFFECTIVELY CONTROL THE TOUR OPERATOR INDUSTRY.

UNDER THIS ALTERNATIVE, EACH TRANSPORTATION REGULATORY AGENCY WOULD RETAIN CONTROL OVER THE TRANSPORTATION PART OF THE TOUR ONLY. THE REMAINING TOUR ACTIVITIES--LAND PACKAGES, ADVERTISING, CONTRACTS, ETC.--WOULD BE SUBJECT TO FTC JURISDICTION. ALTHOUGH SOME JURISDICTIONAL OVERLAP MAY OCCUR, IT COULD BE MINIMIZED.

HAVING FTC AS THE FOCAL POINT FOR ENFORCING CONSUMER PROTECTION IN THE TOUR INDUSTRY WOULD NOT ONLY HELP CONSUMERS, BUT WOULD ALSO HELP TOUR OPERATORS. NO LONGER WOULD THEY BE SUBJECTED TO DIFFERING AND FRAGMENTED CONTROLS. FTC COULD STANDARDIZE CONSUMER PROTECTION CONTROLS FOR ALL TOUR PACKAGES REGARDLESS OF THE TYPE OF TRANSPORTATION EMPLOYED. THIS WOULD FACILITATE A MORE LOGICAL AND UNIFORM ENFORCEMENT POLICY.

ANOTHER IMPORTANT REASON FOR SELECTING FTC AS THE LEAD AGENCY IS THAT UNDER THE AIRLINE DEREGULATION ACT OF 1978, CAB IS GRADUALLY BEING PHASED OUT BY 1985. BECAUSE MOST OF THE TOUR PACKAGE CONTROLS DERIVE FROM CAB, THEY WOULD PROBABLY HAVE TO BE TRANSFERRED TO FTC BEFORE 1985 ANYWAY.

TENTATIVE CONCLUSIONS

WE WERE IN THE PROCESS OF DRAFTING A REPORT TO THE CONGRESS ON THE PACKAGE TOUR INDUSTRY WHEN WE LEARNED OF YOUR INTEREST TO HAVE US DISCUSS OUR OBSERVATIONS AT THESE HEARINGS.

ACCORDINGLY, THE VARIOUS FEDERAL AGENCIES INVOLVED HAVE NOT BEEN GIVEN AN OPPORTUNITY TO FORMALLY COMMENT ON OUR TENTATIVE CONCLUSIONS AND PROPOSALS.

GREATER CONTROLS TO PROTECT THE TOURING PUBLIC ARE NEEDED, BUT MAY BE DIFFICULT TO ACHIEVE UNDER THE CURRENT DISJOINTED FEDERAL REGULATORY STRUCTURE. ESTABLISHING A FEDERAL FOCAL POINT FOR ENFORCING CONSUMER PROTECTION IN THE TOUR INDUSTRY COULD HELP UNIFY FEDERAL CONTROLS. ALSO, IN LIGHT OF THE PRESENT DEREGULATION MOOD, STEPS COULD BE TAKEN TO PLACE MORE RELIANCE ON SELF-REGULATION IN THE TOUR INDUSTRY.

SPECIFICALLY WHAT SEEMS TO BE NEEDED IS CLEAR LEGISLATION MANDATING ONE AGENCY, FTC, TO ENFORCE UNFAIR AND DECEPTIVE PRACTICES CONCERNING PACKAGE TOURS. ONCE GIVEN THE AUTHORITY, FTC'S REGULATION OF THE INDUSTRY SHOULD FOCUS ON THE FOLLOWING.

- REQUIRING GREATER AFFIRMATIVE DISCLOSURE OF BASIC TOUR INFORMATION IN BROCHURES AND CONTRACTS.
- MODIFYING THE TYPICAL LIABILITY LIMITATION CLAUSE IN CONTRACTS TO STRIKE OUT LANGUAGE WHICH IS CLEARLY UNCONSCIONABLE AND UNENFORCEABLE.
- REQUIRING THE TRAVELER TO BE PROMPTLY NOTIFIED OF IMPORTANT CHANGES IN A PACKAGE TOUR AND THAT HE BE GIVEN THE OPTION TO CANCEL WITHOUT PENALTY.
- ALLOWING THE TRAVELER TO SUE THE TOUR OPERATOR IN THE JURISDICTION WHERE HE PURCHASED THE TOUR PACKAGE. THIS COULD BE ACCOMPLISHED BY REQUIRING TOUR

OPERATORS TO DESIGNATE TRAVEL AGENTS WHICH
SELL THEIR TOURS, AS THEIR AGENTS FOR ACCEPT-
ING SERVICE OF PROCESS.

IN ADDITION, CONGRESS SHOULD DIRECT FTC TO ASSIST THE
TOUR OPERATOR INDUSTRY IN GRADUALLY IMPLEMENTING A CONSUMER
PROTECTION FUND. INITIALLY THE FUND COULD PROTECT THE CON-
SUMER FROM TOUR OPERATOR DEFAULTS ONLY. AS EXPERIENCE WITH
THE FUND DEVELOPS, THE INDUSTRY COULD THEN BE ALLOWED TO
ESTABLISH, ON A TRIAL BASIS, A CONSUMER REDRESS MECHANISM
TO RESOLVE PARTIAL NON-PERFORMANCE AND QUALITY OF SERVICE COM-
PLAINTS.

MR. CHAIRMAN WE WILL BE GLAD TO RESPOND TO ANY QUESTIONS
YOU MAY HAVE.

SUMMARY OF THE
FEDERAL TRADE COMMISSION'S
INVESTIGATION OF THE TOUR INDUSTRY

IN EARLY 1976 THE FEDERAL TRADE COMMISSION (FTC) INITIATED AN INVESTIGATION OF THE PACKAGE TOUR INDUSTRY. DURING ITS INVESTIGATION IT RECEIVED ABOUT 3,000 COMPLAINTS FROM TRAVELERS, AND SUBPOENAED DATA FROM VARIOUS TOUR OPERATORS. THE FOLLOWING IS A SUMMARY OF THIS DATA BY MAJOR TYPE OF COMPLAINT.

FAILURE TO PROVIDE ADVERTISED ITEMS

FTC ESTIMATES THAT PERHAPS THE MOST COMMON UNPLEASANT EXPERIENCE OF TRAVELING CONSUMERS IS THE FAILURE TO RECEIVE ONE OR MORE ADVERTISED ITEMS.) ABOUT 36 PERCENT OF THE COMPLAINTS FTC RECEIVED RELATE TO THIS AREA; COMPLAINT FILES OF SUBPOENAED OPERATORS REVEALED A SIMILAR PATTERN.

THE DIFFERENCE BETWEEN WHAT IS PROMISED AND WHAT IS DELIVERED MAY RANGE FROM MINOR TO WHOLLY UNACCEPTABLE, SUCH AS NOT RECEIVING A PROMISED FLOWER LEI OR DAILY BREAKFAST, TO COMPLAINTS ABOUT BEING TRANSPORTED TO THE WRONG DESTINATION.

SOMETIMES REFUNDING THE VALUE OF THE MISSED ITEM IS OF LITTLE CONSOLATION. FOR EXAMPLE, ABOUT 1,000 FOOTBALL FANS FROM PENNSYLVANIA PURCHASED A TOUR PACKAGE TO THE 1975 SUPER BOWL IN MIAMI. THE TOUR INCLUDED ROUND TRIP AIR TRANSPORTATION, ROOM ACCOMMODATIONS, AND TICKETS TO THE SUPER BOWL. THE AIR TRANSPORTATION AND ACCOMMODATIONS WERE DELIVERED, BUT NOT THE

TICKETS. OBVIOUSLY, RETURNING THE PURCHASE PRICE OF THE TICKETS IS NOT A SATISFACTORY SOLUTION.

LACK OF NOTIFICATION OF CHANGES

(ALMOST ALL TOUR OPERATORS HAVE A HIGH INCIDENCE OF COMPLAINTS INVOLVING THE NOTIFICATION OR LACK THEREOF OF CHANGES IN TOURS.) ACCORDING TO FTC'S EXAMINATION OF COMPLAINTS AGAINST TOUR OPERATORS, THE RANGE OF NOTIFICATION COMPLAINTS VARIED FROM 28 TO 90 PERCENT. IN FACT THE INVESTIGATION DISCLOSED A WIDESPREAD PRACTICE BY MANY TOUR OPERATORS OF RADICALLY CHANGING SIGNIFICANT AND MATERIAL FEATURES OF MANY TOURS WITHOUT NOTICE. ALTERNATIVELY, IF NOTICE IS GIVEN, FTC CLAIMS IT IS GIVEN SO LATE (EVEN THOUGH THE OPERATOR KNEW OF THE CHANGE MUCH EARLIER) THAT THE TRAVELER HAS NO CHOICE BUT TO ACCEPT THE CHANGE.

AMONG THE CHANGES FOR WHICH NOTIFICATION IS OFTEN NOT GIVEN INCLUDE:

- SEVERE ITINERARY CHANGES, ELIMINATION OF TURKEY FROM GREECE-TURKEY PACKAGE AND SUBSTITUTING ISRAEL.
- CHANGE IN CLASS OF HOTEL OR LOCATION, SUBSTITUTING A HOTEL IN DOWNTOWN WAIKIKI RATHER THAN A HOTEL IN A DESERTED PART OF MAUI--WELL AWAY FROM "CIVILIZATION."
- CHANGING DEPARTURE OR ARRIVAL POINT, DAY, OR TIME, SUCH AS DEPARTING FROM PHILADELPHIA INSTEAD OF THE SCHEDULED NEW YORK AIRPORT NECESSITATING A BUS RIDE TO PHILADELPHIA.

CONSUMER COMPLAINTS AND SUBPOENA RETURNS SHOW THAT IN MANY INSTANCES THE TOUR OPERATORS WERE AWARE, MONTHS IN ADVANCE OF DEPARTURE, THAT MAJOR COMPONENTS OF THE PREVIOUSLY ADVERTISED TOURS WOULD NOT BE FORTHCOMING. FREQUENTLY, HOWEVER, NO NOTICE OF CHANGE IS GIVEN TO CONSUMERS. AT OTHER TIMES THE INFORMATION ABOUT THE CHANGE IS WITHHELD UNTIL THE CONSUMERS HAVE BOARDED THE PLANE.

IN ONE SUCH COMPLAINT THE CONSUMER STATED HE WAS ADVISED IN MID-FLIGHT THAT EMPLOYEES OF THE DESIGNATED HOTEL HAD BEEN ON STRIKE FOR A MONTH. REGARDLESS, THE TOUR WAS PUT UP AT THE HOTEL. PORTERS WERE NOT AVAILABLE TO CARRY LUGGAGE AND THE PLACE WAS FILTHY. TO COMPOUND THE DISCOMFORT, THE NEXT HOTEL ON THE TOUR WAS A SUBSTITUTION WITH ROOMS CARRYING A PRICE THAT WAS ALMOST HALF THE PRICE OF ROOMS AT THE ORIGINAL HOTEL. FURTHER, THE SUBSTITUTED HOTEL WAS IN AN OUT OF THE WAY LOCATION REQUIRING A LARGE EXPENDITURE OF MONEY ON UNANTICIPATED TAXI FARES. NO REFUND WAS OFFERED.

OMISSION OF SIGNIFICANT INFORMATION

ADEQUATE DISCLOSURE OF INFORMATION ABOUT A PACKAGE TOUR IS IMPORTANT FOR THE CONSUMER TO MAKE AN INTELLIGENT CHOICE NOT ONLY BETWEEN PACKAGED TOURS BUT ALSO WHETHER TO MAKE HIS OWN ARRANGEMENTS. THE CONSUMER NEEDS TO KNOW THAT THE HOTEL PICTURED IN THE BROCHURE MAY BE SUBSTITUTED, THAT THE DESTINATION OR DEPARTURE CITY IS UNCERTAIN, OR THAT THE PRICE MAY INCREASE PRIOR TO DEPARTURE.

SINCE TRAVEL CONSUMERS USUALLY CONTRACT FOR SERVICES TO BE SUPPLIED IN THE FUTURE, THEIR BEING NOTIFIED OF SIGNIFICANT CHANGES IN ITINERARY, PRICE, OR HOTEL IS ESSENTIAL IN THEIR CHOICE OF WHICH TOUR TO BUY. (ACCORDING TO FTC, TOUR OPERATORS GIVE VIRTUALLY NO INFORMATION IN THEIR BROCHURES AS TO THE METHOD OF NOTIFICATION FOR ANY CHANGES OR INDEED, IF NOTICE WILL BE GIVEN AT ALL.)

(ANOTHER PROBLEM, ACCORDING TO FTC, IS THE TRAVELER'S INABILITY TO ASCERTAIN EASILY FROM THE BROCHURE WHO THE TOUR OPERATOR IS, OR WHETHER IN FACT THERE IS ONE AND WHO IS LIABLE IF SOMETHING GOES WRONG.) FTC REVIEWED 30 BROCHURES CHOSEN AT RANDOM FROM A RETAIL TRAVEL AGENT. THE REVIEW REVEALED THAT ONLY IN 8 OUT OF 30 BROCHURES COULD IT EASILY DISCERN WHO WAS THE TOUR OPERATOR.

LIMITATION OF LIABILITY CLAUSES

BASED ON CONSUMER COMPLAINTS AND SUBPOENA RETURNS, FTC BELIEVES BROAD EXCULPATORY CLAUSES ARE BOILERPLATE IN THE TRAVEL INDUSTRY. IN FACT, (FTC UNCOVERED ONLY ONE OPERATOR THAT DID NOT HAVE AN EXTREMELY BROADLY PHRASED LIMITATION OF LIABILITY CLAUSE, TYPICALLY INSERTED IN THE FINE PRINT OF THE BROCHURE.)

(FTC FOUND THAT ALMOST INVARIABLY OPERATORS LIMIT THEIR LIABILITY FOR) ACTS OF GOD (NATURAL DISASTERS, BAD WEATHER, ETC.) ACTS OF THIRD PARTIES (STRIKES, POLITICAL TURMOIL, ETC.) AND MOST IMPORTANTLY (THE FAILURE,) FOR WHATEVER REASON, (OF ANOTHER PARTY TO PERFORM ITS CONTRACT WITH THE WHOLESALER) (HOTELS FAILING TO HONOR RESERVATIONS, SIGHTSEEING COMPANY FAILING TO

SHOW UP, ETC.) LESS UNIVERSAL, BUT NEVERTHELESS IN A SIGNIFICANT NUMBER OF CASES, OPERATORS ATTEMPT TO EXCULPATE THEMSELVES FROM THEIR OWN NEGLIGENT ACTS.) FOR EXAMPLE, ONE TOUR OPERATOR'S BROCHURE SAYS THAT IT "SHALL NOT BE OR BECOME LIABLE OR RESPONSIBLE IN ANY WAY IN CONNECTION WITH SUCH MEANS OF TRANSPORT OR OTHER SERVICES OR FOR ANY LOSS, INJURY OR DAMAGE TO OR IN RESPECT OF ANY PERSON OR PROPERTY HOWEVER ARISING."

ACCORDING TO FTC, COURTS GENERALLY HAVE UPHELD EXCULPATORY CLAUSES IN CASES WHERE THE PLAINTIFFS SOUGHT DAMAGES FOR PHYSICAL INJURIES SUFFERED IN THE MIDST OF A TOUR AND WHERE THOSE DAMAGES WERE NOT CAUSED BY THE OPERATOR'S NEGLIGENCE. GENERALLY THE CLAUSES HAVE BEEN DISREGARDED WHERE THE PLAINTIFF SUED FOR A FAILURE TO DELIVER THE TOUR AS REPRESENTED. ALTHOUGH THESE CLAUSES RARELY AFFECT THE OUTCOME OF ANY LITIGATION (EXCEPT PHYSICAL INJURIES), THEY MAY IN FACT DETER MANY CONSUMERS FROM ACTIVELY ASSERTING THEIR RIGHTS.



Federal Maritime Commission
Washington, D. C. 20573

Office of the Chairman

May 7, 1979

Henry Eschwege, Director
Community and Economic Development
Division
United States General Accounting
Office
Washington, D. C. 20548

Dear Mr. Eschwege:

This is in reply to your request of April 17, 1979, for my comments on your recommendations with respect to regulation of the tour industry and your recent testimony on the subject before the House Government Operations Committee, Subcommittee on Commerce, Consumer and Monetary Affairs. Since the Federal Maritime Commission's primary jurisdiction with respect to the tour industry is limited to passenger vessel cruise operations, my comments will necessarily concern only the transportation of passengers by water.

As you are aware, this Commission administers section 3 of Public Law 89-777 which requires most passenger vessel operators to evidence financial responsibility for indemnification of passengers for nonperformance of transportation. Since the implementation of this legislation in 1967, the Commission has received relatively few complaints concerning nonperformance by cruise operators and in most instances we have found that the cruise operator has endeavored to negotiate compromise settlements. In those rare instances where complete nonperformance has occurred and the passenger vessel operator has defaulted, the evidence of financial responsibility required by statute and Commission regulations has satisfied the claims of passengers.

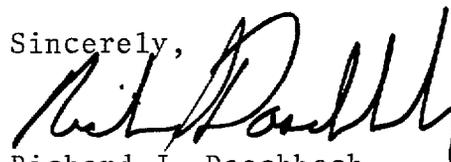
With respect to "package" tours, it is the Commission's position that the passenger cruise operator is responsible only for the water portion of the transportation. The Commission has no jurisdiction over the air or land portion.

Based on our experience, we find no pressing need to expand the scope of regulation over the passenger vessel industry which has submitted evidence of financial responsibility to cover claims for nonperformance in excess of \$100,000,000. In my opinion the financial responsibility program administered by the Commission has worked well to afford protection to cruise passengers for nonperformance of transportation.

Although the Commission has no jurisdiction over "package" tour operators as such, it appears that your study has concluded that additional consumer protection with respect to the air and land portions of "package" tours is warranted. Accordingly, it would appear that your recommendation to require full disclosure of basic tour information, modification of liability limitation clauses in passenger ticket contracts, prompt notification of changes in tour itineraries, and a procedure permitting passengers to file suit against tour operators in the jurisdiction in which the tour ticket was purchased would be appropriate. I favor any necessary means to protect the consumer.

I trust the foregoing will assist you in your endeavor, and if I can be of further assistance, please do not hesitate to contact me.

Sincerely,



Richard J. Daschbach
Chairman

Interstate Commerce Commission

Washington, D.C. 20423

OFFICE OF THE CHAIRMAN

May 7, 1979

Mr. Henry Eschwege
Director
Community and Economic Development
Division
United States General Accounting Office
Washington, DC 20548

Dear Mr. Eschwege:

This response to your letter of April 17, 1979, is made on behalf of the entire Commission.

As you requested we have reviewed your recommendations for Federal controls over the tour industry and your recent testimony on this subject before the House Government Operations Committee, Subcommittee on Congress, Consumer, and Monetary Affairs.

To the extent that greater Federal controls are needed to protect the public using package tours, the Commission agrees that consumer protection activities should be properly coordinated. We express no opinion as to whether the Federal Trade Commission, or some other government agency, should coordinate these activities.

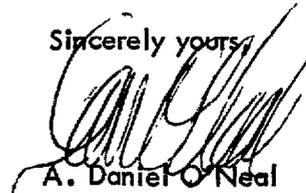
Your testimony states that given legislative authority, regulation of the package tour industry should focus on requiring greater affirmative disclosure of tour information in brochures and contracts, modifying the typical liability limitation clause in contracts, requiring prompt notification of important changes in a package tour with the option to cancel without penalty, and allowing the traveler to sue the tour operator in the jurisdiction of tour purchase. The concept of a voluntary, consumer protection trust fund to encourage self-regulation also appears worthy of further evaluation.

Under the legislation you would propose, each transportation regulatory agency would retain control over the transportation part of the tour only. Thus, there would be no significant impact on current ICC regulation.

The Commission receives few complaints regarding package tours by bus. This may in part be due to a situation that FTC's 1976 investigation of the package tour industry discovered. That is, a high majority of travel agent brochures are unclear as to identification of the tour operator. This Commission does and would continue to require that charter bus operators obtain security bonds to ensure their viability.

We feel you are correct in stressing the importance of coordination of consumer protection actions aimed at the growing package tour industry. As fuel becomes more scarce and expensive, we feel that every practical action should be taken to encourage those who are going to travel to choose the most energy efficient modes.

Sincerely yours,

A handwritten signature in black ink, appearing to read "A. Daniel O'Neal".

A. Daniel O'Neal
Chairman



CIVIL AERONAUTICS BOARD

WASHINGTON, D.C. 20428

IN REPLY REFER TO B-1-98

June 13, 1979

Mr. Henry Eschwege
Director, Community and Economic
Development Division
General Accounting Office
Washington, D.C. 20548

Dear Mr. Eschwege:

We appreciate the opportunity you have given us to review and comment upon your proposal to recommend to the Congress that the FTC be given authority over unfair and deceptive practices concerning the non-transportation portion of tour packages. We do believe that legislation which will clarify some of the jurisdictional questions that now exist between the various regulatory agencies will ultimately benefit consumers. However, if GAO also intends to recommend that the Board's present statutory authority to provide consumer protection in this area be eliminated at the same time, we are concerned that such action could be detrimental to the interests of the travelling public. Any reduction in the Board's jurisdiction should be accomplished as part of an overall transfer to the FTC of the Board's consumer protection functions.

Protecting the interests of the public in dealings with airlines and travel agents is an activity to which the Board devotes a substantial portion of its resources. While in the past the Board has been pursuing such matters on an individual case basis, we are now directing more of our efforts into developing regulations which are applicable to the industry as a whole. In the area of tour packages, we have recently promulgated extensive consumer protection regulations for purchasers of charter tour packages. Major features of these rules include requirements for affirmative disclosure of all the details of the tour, for prompt notification of changes and for complete refunds to passengers in the event of major changes. These provisions were necessitated because of consumer dissatisfaction with charter tour packages. Our Bureau of Consumer Protection is in the process of attempting to determine whether the tour packages on scheduled airline service are producing the same widespread consumer problems that we encountered with charter packages. This review, of course, could eventually result in similar rules for scheduled tour packages.

Should our authority to regulate the ground portion of an air tour package be terminated, these regulations—both our present ones and future ones—would be void insofar as they relate to ground services and accommodations. It is unlikely, however, that the FTC could adopt regulations, as GAO has proposed, in a relatively short amount of time after being given jurisdiction over package tours. Accordingly, during that interim period, the public would be deprived of the protections that would have been afforded by the Board's regulations. This situation could be remedied by permitting the Board to retain its present authority.

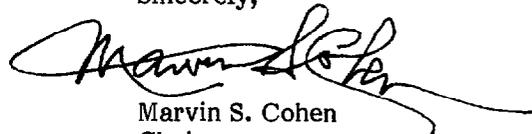
It should also be noted that the Board possesses a licensing authority which enables us to impose obligations on air carriers above and beyond what would otherwise be permissible under a mere statutory proscription against unfair and deceptive practices. This authority has enhanced our ability to establish and enforce some of the major consumer protection features presently in the regulations governing the sale of charter tour packages, such as requiring tour operators to be bonded and/or to escrow deposits, requiring tour operators to offer trip cancellation insurance, prohibiting tour operators from accepting money from consumers without first obtaining their signature to a contract containing the details of the tour package, and prohibiting tour operators from making major changes in the tour package without offering the consumer a full refund. The proposal to eliminate the Board's authority over the ground portion of charter tour packages could, we believe, actually result in a reduction of benefits and protections for purchasers of such packages.

For these reasons we recommend that the legislative proposal which you intend to submit to Congress provide that the Board shall retain its present statutory authority over the sale of air tour packages. We do not anticipate dual jurisdiction will lead to any inconsistency in the overall regulation of tours, since the Board will work closely with the FTC to insure that whatever regulations we have or will impose will mesh smoothly with whatever requirements the FTC should establish.

The consumer protection fund that you propose is worthy of serious consideration. Proponents of the fund argue that it would benefit all parties, by providing a standard form of recourse for tour participants with valid complaints, and would be easier for tour operators to comply with than the Board's current bonding and escrow requirements. Our staff has already been examining the possibility of such a fund. Your proposed legislation would provide a good occasion for soliciting further suggestions, including how such a fund might be administered, what the extent of government involvement should be, and what anticompetitive problems there might be.

While we have no other objections to the legislative proposal, you should be aware that senior staff members of the Board and the FTC are working together to develop a plan to transfer the Board's consumer protection responsibilities and programs to the FTC in connection with the Board's termination. We believe it would be more useful to consider the elimination of our jurisdiction over the ground portions of charter tours in that context.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marvin S. Cohen".

Marvin S. Cohen
Chairman

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

OFFICE OF THE CHAIRMAN

May 11, 1979

Mr. Gregory J. Ahart
Director, Human Resources Division
United States General Accounting Office
Washington, DC 20548

Dear Mr. Ahart:

Thank you for your April 18, 1979, letter and enclosure setting out plans of the General Accounting Office to recommend that Congress enact legislation affecting consumer protection in the travel industry. We appreciate the opportunity to comment before the GAO submits its recommendations. The Commission shares your concern that existing law leaves room for uncertainty regarding the jurisdiction of various relevant agencies over the travel industry. Accordingly, it may be of value to clarify the extent of such existing authority, and to allocate it in a way most conducive to effective regulation. However, the Commission questions whether the way in which you have proposed to allocate such authority is the most desirable.

At present, Federal consumer protection activity in the travel industry relies on the regulatory efforts of each of the transportation regulation agencies (the Civil Aeronautics Board, the Interstate Commerce Commission, and the Federal Maritime Commission) as well as the Federal Trade Commission. As we understand your proposal, the GAO will urge Congress to pass legislation vesting authority to regulate package tours in the FTC, except for the transportation portion of the tour, which would remain subject to regulation by the relevant transportation agency.

While there are arguments to be made for the foregoing approach, a major shortcoming is that it divides authority to regulate closely interrelated parts of the same transaction. The land portion of a tour is inextricably tied to the transportation component. Airlines, for example, sell complete package tours as a method of promoting air travel. The same advertisement or promotional brochure is, therefore, likely to contain claims about the travel and the land portions of a tour, and there is much to be said, accordingly, for vesting in one agency authority to police deception and unfairness in all aspects of this unitary transaction.

To divide jurisdiction over a tour between the FTC on one hand and the various transportation regulatory agencies on the other offers the possibilities of a regulatory gap or jurisdictional disputes. We believe that the agencies that now have economic control over a given mode of transportation can and should exercise consumer protection responsibilities over tours that utilize that mode of transportation.

In the foregoing regard, the CAB has recently acted to provide protection to travelers on tours using air transportation. */ The CAB rule requires up-front disclosures of important information prior to the signing of the contract. It also gives travelers certain rights to cancel a tour if certain designated major changes are made before departure, or to reject certain changes made after departure. The rule is, in our opinion, an important first step toward sensible protection of the traveling public -- helping consumers without placing unrealistic burdens on the industry that would redound to the detriment of all consumers. Further, the CAB rule puts into effect most of the remedial mechanisms suggested in your letter.

The FTC filed comments in the CAB rulemaking. Although the CAB did not adopt some of our proposals, we strongly supported, and still support, the CAB rule as a promising approach to correcting problems in the package tour industry. We see no justification at this time for Congress to transfer to the FTC the implementation of this rule or for requiring that consumers forego protection now afforded by the CAB rule which is now in effect while the FTC begins to

*/ During the FTC investigation into the travel industry, the majority of complaints received involved tours using air transportation. This comports with Director Eschwege's comment on p.4 of his April 5, 1979 statement that ". . . [A]bout 95 percent of all tours involved air transportation." It does not appear that the land and sea tour industries have experienced the major expansion and changes that the air tour industry has.

undertake parallel or duplicative action. **/ We have no reason now to doubt that the CAB will be able to implement the rule effectively. If the CAB is phased out by 1985, we expect that Congress will make provision for an orderly transition of necessary consumer protection functions to an appropriate agency. In so doing, however, an important consideration to be kept in mind will be the desirability of centralizing authority to regulate deception in both the air travel and the land portions of the tour.

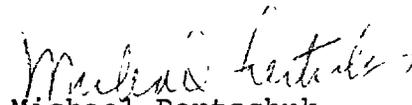
Your final proposal is that the FTC be directed to assist industry in setting up a consumer protection fund. As you are aware, the FTC recommended to the CAB that it consider establishing a consumer protection fund and we continue to believe that such an approach should be vigorously pursued. There are, however, a variety of unanswered questions regarding the feasibility and propriety of such a fund. We, therefore, think that rather than mandating the creation of such a fund, it would be preferable simply to mandate that the advisability and workability of such a fund be formally considered in a proceeding that might well lead to the creation of such a fund. It being our view that CAB's initiatives in the travel area should be allowed time

**/ In its comments to the CAB, the Commission urged CAB to broaden the scope of its rule to cover tours offered incident to regularly scheduled airline flights so as not to create disparity of treatment between purchasers of these tours and charter customers. While the Commission believes that the CAB now possesses the authority to do this, the Commission agrees with the observations of Director Eschwege at pp. 5-6 of his testimony that the authority of the transportation agencies to regulate certain types of land arrangements may be open to dispute. Rather than stripping the transportation agencies of all such authority however, the Commission believes that it would be preferable to expand or clarify their authority to cover all tours related to the mode of transportation they regulate. In particular, with respect to the CAB, we think that it makes most sense for the same agency to regulate both the flight portion of a trip, and the land portion, whether the flight portion is a charter or regularly scheduled.

to work, we accordingly think that CAB would be best positioned now to address the issue of the consumer protection fund, as we urged it to do in our comments.

In sum, the Commission believes that market and regulatory process already in motion in the travel industry should be given a chance to work. We believe that the most appropriate approach at this time is for the relevant agencies to continue to monitor developments in the industry to see whether and where there is consumer harm which would best be corrected by agency action. While the Commission will not hesitate to exercise such existing statutory authority as it has should developments warrant, we believe it preferable that regulation of the transportation and land portions of tours be unified. To the extent that the existing state of the law is unclear and thus discourages such unified regulation, we believe that clarification is in order.

By direction of the Commission.


Michael Pertschuk
Chairman

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